# The Commonwealth of Massachusetts

## DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 04-111 March 21, 2005

Petition of Bay State Gas Company for Approval of its Gas Sales Agreement with BP Canada Energy Company pursuant to G.L. c. 164, § 94 and an Agency Agreement and a Management Services Agreement with Northeast Gas Markets LLC.

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FOR: BAY STATE GAS COMPANY
Petitioner

## I. INTRODUCTION

On November 24, 2004, pursuant to G.L. c. 164, § 94, Bay State Gas Company ("Bay State") filed with the Department of Telecommunications and Energy ("Department") a petition for approval of a gas sales agreement with BP Canada Energy Company ("BP") and related agency and management service agreements with Northeast Gas Markets, LLC ("NEGM").[1] The gas sales agreement ("GSA") replaces Bay State's current supply contract with EnCana Corporation ("Encana"), which will expire on April 1, 2005. The Encana contract was approved by the Department in Bay State Gas Company, D.T.E. 02-52 (2002). The Agency Agreement ("AA") and Management Services Agreement ("MSA") require NEGM to perform day-to-day administrative services for Bay State under the GSA.

Pursuant to notice duly issued, the Department held a public hearing on this matter on January 31, 2005. No members of the public were in attendance. The record consists of twenty exhibits submitted by Bay State and its responses to twenty-two information requests.[2]

## II. DESCRIPTION OF BAY STATE'S PROPOSAL

### A. Proposed Agreements

According to Bay State, the GSA is a two-year contract that entitles Bay State to receive, on a firm basis, 10,471 dekatherms ("Dth") per day from BP at the international

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1 NEGM is a project development and gas supply contract management firm located in Beverly, Massachusetts (Exh. BSG-1, at 4).

2 At the conclusion of the public hearing, the Department allowed Bay State's motion to admit into evidence its prefiled testimony and exhibits and its responses to the Department's information requests.

boundary near Niagara Falls, New York (Exhs. BSG-1, at 3; DTE 1-2(b)).[3] Bay State explains that it retains the flexibility to reduce the daily contract quantity by as much as 100 percent no later than five business days prior to the beginning of the next month (Exh. BSG-1, at 3). Pricing for the term of the GSA is based on an indexed price as published monthly in Platts Inside FERC's Gas Market Report for deliveries at Niagara, plus a charge per Dth as specified in the GSA (Exh. FCD-1, at 2).

Bay State indicates that the AA authorizes NEGM to act on its behalf with respect to the administration and management of the underlying GSA (Exhs. BSG-1, at 15; DTE 1-7). The MSA details all services to be rendered by NEGM as its administrative agent, including those relating to such core activities as nominations and confirmations, billing and payment, obtaining necessary regulatory approvals particularly with regard to Canadian regulatory processes, contract negotiations, and regulatory and compliance reporting (Exhs. BSG-1, at 16-17; FCD-3, at 2-4). As compensation for these services, Bay State states that it will pay NEGM a per Dth fee based upon the volume of contract gas entitlements and number of days in the month without regard to actual quantities of gas delivered for that month (Exhs. BSG-1, at 16; DTE 1-8(a) (Confidential); FCD-3, at 5-6). Bay State notes that the AA does not provide for any compensation to NEGM (Exh. DTE 1-7).

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[3] The term of the GSA begins on April 1, 2005, and ends on April 1, 2007 (Exh. FCD-1, at 3).

B. Request for Proposals Process

To secure a competitive replacement gas supply for its contract with EnCana, Bay State joined forces with NEGM and a coalition of other local distribution companies ("LDCs") (collectively, the "Renewal Group") to conduct a request for proposals ("RFP") (Exh. BSG-1, at 5).[4] On August 14, 2003, the Renewal Group issued a joint RFP to 22 potential bidders and requested they submit multiple volume, service, contract duration, and pricing options (id., at 6, 8-9).[5] Twelve companies responded to the RFP (id., at 9-10).[6] After sorting the bid responses by location and term and standardizing the price offered to a common price index, the RFP responses could be compared on an equal basis (id., at 11). The bids were evaluated on the basis of four criteria, which were each allotted maximum percentage values: price,

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4 Over the last 24 years, NEGM and its participating LDC customers have worked together to develop new, reliable, competitively priced natural gas supples (Exh. DTE 1-13). The Renewal Group includes: Bay State; The Berkshire Gas Company; Boston Gas Company d/b/a KeySpan Energy Delivery New England; Connecticut Natural Gas Corporation; The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York; EnergyNorth Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England; Essex Gas Company d/b/a KeySpan Energy Delivery New England; KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island; and Northern Utilities, Inc. (Exhs. FCD-2, at 1; FCD-3, at 1).

5 The recipients of the EnCana replacement gas supply RFP were: Amerada Hess Corp., Apache Canada Ltd., BP, Canadian Natural Resources Ltd, Cargill, Cinergy, Constellation Power, Coral Energy, DTE Energy, Duke Energy Trading and Marketing, Emera, EnCana Corporation, Husky, Imperial Oil, Marathon Canada, NRJ Energy, NEXEN, Proliance Energy, RWE Trading Americas, Sempra Energy Trading, Sprague, and Tenaska (Exh. BSG-1, at 8).

6 Bids were submitted by Amerada Hess Corp, BP, Canadian Natural Resources Ltd., Cargill, Coral Energy, DTE Energy, Emera, Husky, NRJ Energy, NEXEN, Sempra Energy Trading, and Sprague (Exh. BSG-1, at 9-10).

security of supply, bid flexibility, and supplier viability (id., at 11-12). Based upon these sorting sequences and criteria, the Renewal Group identified the top five bidders and asked them to refresh their bids, emphasizing volume flexibility, delivery point, and pricing options, in order to encourage more competitive pricing (id. at 12-13). After clarifications and negotiations, each bidder provided a final bid and Bay State determined that BP provided the best price and overall value (id. at 13-15; Exh. DTE 1-2(b)).

Bay State also conducted an RFP for replacement agency and management services (Exh. BSG-1, at 16-17). On March 19, 2004, Bay State issued the MSA RFP to three entities.[7] To evaluate the bids, Bay State states that it considered price and non-price factors and determined that NEGM was the best choice (id. at 18; Exh. DTE 1-11). Bay State indicates that each member of the Renewal Group entered into the same AA and MSA with NEGM in conjunction with gas sales agreements to be executed with BP and/or Nexen Marketing (Exhs. BSG-1, at 15-16; FCD-2, at 1; FCD-3, at 1).

C. Position of Bay State

According to Bay State, the GSA is consistent with the Department's precedent and standard of review for acquisition of commodity resources (Exh. BSG-1, at 2-3). To identify the least-cost supply option, Bay State asserts that it used a comprehensive RFP process and evaluated all bids on a cost and non-cost basis (id. at 2, 19-20; Exhs. DTE 1-19; DTE 1-20). Bay State also asserts that its SENDOUT model analysis, which was recognized as a least-cost

[7] The recipients of the management services RFP were Axsess Group, NEGM, and Pace Global Energy Services (Exh. BSG-1, at 18).

supply planning technique in Bay State Gas Company, D.T.E. 02-75, at 34-35 (2004), determined that BP was the least-cost alternative (Exhs. BSG-1, at 19-20; DTE 1-19; FCD-17, at 13 (Confidential)). Bay State contends that the GSA contributes to its overall best-cost portfolio objective by maintaining a diversified, reliable, and competitively priced gas supply (Exhs. BSG-1, at 21; DTE 1-2(b)). Bay State therefore concludes that the GSA is consistent with its portfolio objectives and compares favorably to the range of alternative options reasonably available to Bay State (Exh. BSG-1, at 19).

As for the MSA, Bay State contends that its RFP process identified NEGM as the best-cost service provider (Exh. DTE 1-16(a)). Bay State further contends that non-cost factors, such as NEGM's expertise and prior successful management of Canadian gas contracts, favored NEGM (Exhs. FCD-20 (Confidential); BSG-1, at 18; DTE 1-11). Bay State concludes that the AA and MSA allow it and other LDCs to jointly manage the replacement gas supplies in an efficient manner, and to take advantage of NEGM's expertise in handling transactions of this nature (Exh. BSG-1, at 18; DTE 1-11).

## III. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity resources as well as for the acquisition of capacity under G.L. c. 164, § 94A ("Section 94A"), the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, an LDC must show that the acquisition (1) is consistent with the company's portfolio objectives and (2) compares favorably to the range of alternative options reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation, at the time of the acquisition or contract negotiation. Id.

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved forecast and requirements plan or in a recent review of supply contracts under Section 94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range of capacity, storage, and commodity options that were available to the LDC at the time of the acquisition, as well as those opportunities that were available to other LDCs in the region. Id. In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives, including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29. In making these determinations, the Department considers whether the LDC used a competitive solicitation process that was fair, open and transparent. The Berkshire Gas Company, D.T.E. 02-56, at 9 (2002); D.T.E. 02-52, at 8; KeySpan Energy Delivery New England, D.T.E. 02-54, at 9 (2002); The Berkshire Gas Company, D.T.E. 02-19, at 11 (2002).

## IV. ANALYSIS AND FINDINGS

### A. Request For Proposals Process

The Department will deem an RFP process acceptable if the process was "fair, open and transparent." NOI - Gas Unbundling, D.T.E. 98-32-B, at 54-55 (1999). For the following reasons, the Department finds that the GSA RFP process was fair, open, and transparent. As a preliminary matter, the bid solicitation and evaluation process followed by Bay State and the Renewal Group for replacement gas supplies is identical to the process approved in recent proceedings. The Berkshire Gas Company, D.T.E. 04-35, at 8-9 (2004); KeySpan Energy Delivery New England, D.T.E. 04-29, at 9-10 (2004). In addition, the GSA RFP, which was issued to 22 bidders and produced twelve responses, outlined on a uniform basis the data, terms and options required to enhance the value of the proposal (Exh. FCD-4). The top five bidders were, moreover, given an opportunity to refresh their bids, seek clarification and ultimately submit final bids (Exh. BSG-1, at 13). Finally, none of the potential bidders objected at any time during the RFP process, and consequently there is no indication that bidders were unfairly excluded from consideration or bids unfairly evaluated (Exh. DTE 1-15(a-b)).

The Department similarly finds that the MSA RFP process was fair, open, and transparent. The bid solicitation and evaluation process followed by Bay State for replacement management services conforms to the process approved in D.T.E. 04-29, at 10-11. In addition, the MSA RFP, which was issued to three qualified bidders, outlined on a uniform basis the data, terms and options required to enhance the value of the proposal (Exhs. FCD-18; DTE 1-11; DTE 1-16 (a-b)).

B. Gas Sales Agreement

The Department determines that the GSA is consistent with Bay State's resource portfolio objectives as established in its most recent forecast and requirements plan in D.T.E. 02-75. Having reviewed the RFP responses and Bay State's evaluation of price and non-price factors, the Department concludes that the GSA both compares favorably to the market offerings and conditions facing Bay State at the time of the GSA's execution and enhances the supply diversity and reliability attributes of Bay State's resource portfolio. Furthermore, Bay State's participation in the Renewal Group ensured that it enjoyed substantial economies of scale in securing a least-cost replacement resource. Accordingly, the Department finds the GSA is consistent with the public interest and approves the agreement.

C. Agency and Management Services Agreement

The Department determines that the services to be performed under the AA and MSA are necessary for and consistent with Bay State's portfolio objectives as established in its forecast and requirements plan in D.T.E. 02-75. Significantly, NEGM will provide the MSA services at a lower rate than what NEGM currently charges for these same services under the EnCana agreements (Exh. DTE 1-9 (Confidential)). Consequently, the Department finds that Bay State's ratepayers will benefit from NEGM's substantial Canadian gas contracting expertise, its long-standing relationship with the Renewal Group and lower costs. For these reasons, the Department finds that the AA and MSA are consistent with the public interest and the Department approves them.

## V. ORDER

Accordingly, after due notice, hearing, and consideration, it is hereby

ORDERED: That the gas sales agreement between BP Canada Energy Company and Bay State Gas Company is hereby APPROVED; and it is

FURTHER ORDERED: That the agency agreement between Northeast Gas Markets LLC and Bay State Gas Company is hereby APPROVED; and it is

FURTHER ORDERED: That the management services agreement between Northeast Gas Markets LLC and Bay State Gas Company is hereby APPROVED; and it is

FURTHER ORDERED: That Bay State Gas Company comply with any and all other directives contained in this Order.

By Order of the Department,

____________/s/________________
Paul G. Afonso, Chairman

____________/s/________________
James Connelly, Commissioner

____________/s/________________
W. Robert Keating, Commissioner

____________/s/________________
Judith F. Judson, Commissioner

____________/s/________________
Brian Paul Golden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.